

ROBERT W. FERGUSON
Attorney General

JEFFREY T. SPRUNG, WSBA #23607
R. JULY SIMPSON, WSBA #45869
PAUL M. CRISALLI, WSBA #40681
SPENCER W. COATES, WSBA #49683
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE**

STATE OF WASHINGTON,

Plaintiff,

v.

BETSY DeVOS, in her official
capacity as Secretary of the United
States Department of Education, and
the UNITED STATES
DEPARTMENT OF EDUCATION, a
federal agency,

Defendants.

NO. 2:20-cv-00182-TOR

PLAINTIFF STATE OF
WASHINGTON'S REPLY IN
SUPPORT OF ITS MOTION TO
EXPEDITE AND SET
BRIEFING SCHEDULE FOR
PARTIAL SUMMARY
JUDGMENT

NOTED FOR: July 1, 2020
Without Oral Argument

Washington files this reply in support of its motion for expedited consideration of its Motion for Partial Summary Judgment, which it plans to file today. Washington did not represent that it planned to seek partial final judgment under Fed. R. Civ. P. 54(b), as implied by the Department (ECF No. 35 at 2-3). Instead, it will seek partial summary judgment. *See* Fed. R. Civ. P. 56(a) ("MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT")

PLAINTIFF'S REPLY RE: MOTION
TO EXPEDITE AND SET BRIEFING
SCHEDULE FOR PARTIAL
SUMMARY JUDGMENT
NO. 2:20-cv-00182-TOR

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ATTORNEY GENERAL OF WASHINGTON
Complex Litigation
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
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1 (emphasis added). “[A] partial summary judgment is merely a pretrial
2 adjudication that certain issues shall be deemed established for the trial of the
3 case. This adjudication . . . serves the purpose of speeding up litigation by
4 eliminating before trial matters wherein there is no genuine issue of fact.”
5 Fed. R. Civ. P. 56 (Notes of Advisory Committee on Rules—1946 Amend.).
6 Thus, Washington’s motion does implicate Rule 54(b) and the policy against
7 piecemeal appeals serving as the basis for the Department’s opposition. *See, e.g.,*
8 *Reiter v. Cooper*, 507 U.S. 258, 265 (1993); *Wood v. GCC Bend, LLC*, 422 F.3d
9 873, 878 (9th Cir. 2005); *Cont’l Airlines, Inc. v. Goodyear Tire & Rubber Co.*,
10 819 F.2d 1519, 1525 (9th Cir. 1987).

11 Washington objects to the summary judgment schedule proposed in the
12 Department’s opposition. The schedule gives Washington only eight days to
13 review the administrative record, resolve or litigate any issues with the
14 completeness of the record, and prepare a motion for summary judgment on all
15 issues in the case, including whether the record supports the agency’s decision.
16 This is completely unrealistic.

17 Finally, the Department includes in its opposition brief a request to stay its
18 obligation to answer the complaint. This request was not raised with Washington
19 previously. Washington believes it is premature for the Court to address this
20 request, before the parties have had a chance to meet and confer.
21 *See* LCivR 7(b)(2).
22

1 Washington respectfully requests that the Court order the expedited partial
2 summary judgment schedule outlined in its motion.

3 RESPECTFULLY SUBMITTED this 29th day of June 2020.

4 ROBERT W. FERGUSON
5 Attorney General of Washington

6 /s/ Jeffrey T. Sprung
7 JEFFREY T. SPRUNG, WSBA #23607
8 R. JULY SIMPSON, WSBA #45869
9 PAUL M. CRISALLI, WSBA #40681
10 SPENCER W. COATES, WSBA #49683
11 Assistant Attorneys General
12 800 Fifth Avenue, Suite 2000
13 Seattle, WA 98104-3188
14 (206) 464-7744
15 jeff.sprung@atg.wa.gov
16 july.simpson@atg.wa.gov
17 paul.crisalli@atg.wa.gov
18 spencer.coates@atg.wa.gov
19 *Attorneys for Plaintiff State of Washington*
20
21
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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 29th day of June 2020, at Seattle, Washington.

/s/ Jeffrey T. Sprung

JEFFREY T. SPRUNG, WSBA #23607
Assistant Attorney General